

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: STRYKER LFIT V40 FEMORAL HEAD
PRODUCTS LIABILITY LITIGATION

MDL No. 17-md-2768-IT

This Document Relates to:

All Cases

CASE MANAGEMENT ORDER NO. #3

APPLICABILITY OF THIS ORDER

This Scheduling Order, issued pursuant to Federal Rule of Civil Procedure 16(b) and based on the parties' Rule 26(f) Proposals [#253, #254, #258], applies to all cases previously or hereafter transferred to, or directly filed in this District and coordinated in, MDL Docket No. 2768 ("MDL No. 2768").

I. Case Questionnaires and Disclosures

Case Management Order No. 1 [#216] sets forth the procedures and deadlines governing (i) the serving of Case Questionnaires by Plaintiffs, and (ii) the disclosures required by Defendant Howmedica Osteonics Corp. in response to the receipt of a completed Case Questionnaire.

II. Submission of Master and Short Form Pleadings

Amended Case Management Order No. 2 [#307] sets forth the schedule and procedures for direct filing of complaints, master pleadings, and short form complaints.

III. Fact Depositions

The protocols and procedures governing depositions will be subject to a subsequent case management order. The court anticipates receiving the parties' proposal in advance of the October 26, 2017, Case Management Conference.

IV. Product Introduction

Counsel will briefly introduce the product(s) and terminology to the court on October 26, 2017. The court has allotted a total of 30 minutes for the presentation.

V. Initial Disclosures

Initial disclosures required by Federal Rule of Civil Procedure 26(a)(1) (limited to common MDL claims and defenses) shall be completed by October 31, 2017, and shall thereafter be supplemented as required under Federal Rule of Civil Procedure 26(e)(1)(A).

VI. Initial Written Discovery

Defendant shall respond and/or object to the written discovery served in the New Jersey Multi-County Litigation (and deemed served in this action pursuant to Case Management Order No. 1) by November 1, 2017.

Defendant shall produce privilege logs in accordance with the schedule set forth in the forthcoming Order Establishing Protocol Governing Production of Documents and ESI.

Plaintiff and Defendant Fact Sheets will be addressed in a separate order.

VII. Bellwether Cases

The parties shall submit a proposed case management order for Bellwether cases by December 1, 2017. The proposed case management order shall address whether a bellwether process is appropriate, and shall include proposed procedures for identifying Bellwether cases, and protocols and procedures governing bellwether case-specific discovery, including as to treating physicians.

The parties shall identify Bellwether cases pursuant to the forthcoming Bellwether case management order no later than February 2, 2018.

Bellwether case specific discovery may commence on February 8, 2018.

VIII. Science Day

A Science Day will be held in January 2018. The parties shall meet and confer about the details of the Science Day and submit their proposals in the joint proposed agenda to be submitted prior to the December 2017 status conference.

IX. Completion of Fact Discovery

The Parties shall use their best efforts to produce documents on a rolling basis and shall complete document production by July 31, 2018. Each party withholding documents on the grounds of any privilege or the work-product doctrine shall provide opposing counsel with a copy of the privilege log no later than sixty (60) days after the production.

The Parties shall complete fact discovery by October 4, 2018.

X. Expert Discovery

A. All expert discovery—including general causation, general liability, and case-specific expert discovery—shall be completed by February 15, 2019.

B. Designations of Experts.

1. Plaintiffs shall designate their general causation and general liability experts and produce expert reports on or before October 4, 2018.

2. The bellwether plaintiffs selected for trial pursuant to the processes set forth in the forthcoming Bellwether case management order shall designate their specific-causation experts and produce expert reports on or before November 2, 2018.

3. Defendant shall designate its general causation and general liability experts and produce expert reports on or before November 9, 2018.

4. Defendant shall designate its specific-causation experts for the bellwether cases selected for trial and product expert reports on or before December 7, 2018.

C. Depositions of Experts.

1. Depositions of Plaintiffs' experts may commence on October 4, 2018.

2. Depositions of Defendant's experts may commence after the completion of depositions of Plaintiffs' experts.

D. Production and Discoverability of Expert Materials. No party will seek discovery of any experts' notes, drafts of expert reports, or communications with counsel; provided, however, that counsel may inquire at deposition about any facts provided to the expert by counsel and upon which such expert is relying in expressing the expert's opinions.

XI. Motions Practice

A. Daubert motions on general causation, general liability, and case-specific experts for the bellwether trial plaintiffs must be filed no later than March 15, 2019.

Oppositions to such motions must be filed by April 5, 2019. No further briefing on Daubert motions shall be permitted absent leave of court.

B. Summary Judgment motions shall be filed no later than May 24, 2019. Oppositions to such motions must be filed by June 14, 2019, and reply briefs must be filed by July 8, 2019.

XII. Bellwether Pre-trial Conferences, Orders and Trial

A. The June 2019 Case Management Conference will serve as the initial Pretrial Conference. The parties shall provide an informed estimate of the probable length of trial, based on a trial schedule of 9:00 a.m. to 1:00 p.m.

B. The parties shall make and file all pretrial disclosures required by Federal Rule of Civil Procedure 26(a)(3)(A)(i) and (iii) by no later than August 2, 2019.

C. The parties shall submit motions *in limine* no later than August 9, 2019.

D. The parties shall make and file all pretrial disclosures required by Federal Rule of Civil Procedure 26(a)(3)(A)(ii) by no later than August 14, 2019. As to all witnesses designated pursuant to Federal Rule of Civil Procedure 26(a)(3)(A)(ii), the disclosure shall include identification by inclusive page and lines of any portions of deposition transcripts to be offered at trial other than solely for impeachment.

E. The parties shall submit all oppositions to motions *in limine* no later than August 23, 2019. No further briefing on *in limine* motions shall be permitted absent leave of court.

F. All counter-designations, include identification by inclusive page and lines of any portions of deposition transcripts to be offered at trial other than solely for impeachment, and all objections under Federal Rule of Civil Procedure 26(a)(3)(B) shall be made no later than August 28, 2019.

G. All objections to counter-deposition designations shall be filed no later than September 4, 2019.

H. Proposed jury instructions with citations to authority shall be filed no later than September 4, 2019.

I. A final pretrial conference will be held on September 9, 2019.

J. The first bellwether trial will commence on September 16, 2019.

SO ORDERED this 25th day of October, 2017.

/s/ Indira Talwani

UNITED STATES DISTRICT JUDGE